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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

FILED
BILLINGS DIV.

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PATRICK E. DUFFY, CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

UNITED STATES OF AMERICA,	CR 07-103-BLG-JDS
Plaintiff,	<u>INDICTMENT</u>
vs.	SEXUAL EXPLOITATION OF CHILDREN
BASIL PETER HERBST,	Title 18 U.S.C. § 2251(a) (Counts I, III, V, VII, IX, XI, XIII, XV, XVII, XVIII)
Defendant.	(Penalty: Mandatory minimum 15 to 30 years imprisonment, \$250,000 fine, and lifetime supervised release)
	SEXUAL EXPLOITATION OF CHILDREN
	Title 18 U.S.C. § 2251(b) (Counts II, IV, VI, VIII, X, XII, XIV, XVI, XIX)
	(Penalty: Mandatory minimum 15 to 30 years imprisonment, \$250,000 fine, and lifetime supervised release)

	<p>DISTRIBUTION OF CHILD PORNOGRAPHY Title 18 U.S.C. § 2252A(a)(2) (Count XX) (Penalty: Mandatory minimum five to 20 years imprisonment, \$250,000 fine, and lifetime supervised release)</p> <p>TRANSPORTATION OF CHILD PORNOGRAPHY (Count XXI) Title 18 U.S.C. § 2252A(a)(2) (Penalty: Mandatory minimum five to 20 years imprisonment, \$250,000 fine, and lifetime supervised release)</p> <p>RECEIPT OF CHILD PORNOGRAPHY Title 18 U.S.C. § 2252A(a)(2) (Count XXII) (Penalty: Mandatory minimum five to 20 years imprisonment, \$250,000 fine, and lifetime supervised release)</p> <p>POSSESSION OF CHILD PORNOGRAPHY Title 18 U.S.C. §2252A(a)(5)(B)(Count XXIII) (Penalty: Mandatory minimum ten to 20 years imprisonment, \$250,000 fine, and lifetime supervised release)</p> <p>FORFEITURE Title 18 U.S.C. § 2253(a)(3)</p>
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THE GRAND JURY CHARGES:

COUNT I (Sunshine Shirt Outdoor Series)

That in approximately 2004, at an outdoor location in or near Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using

material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT II (Sunshine Shirt Outdoor Series)

That in approximately 2004, at an outdoor location in or near Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor, B. (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT III (Vehicle Series)

That in approximately 2004, in a vehicle in the vicinity of Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or

foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT IV (Vehicle Series)

That in approximately 2004, in the vicinity of Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor, B. (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT V (Dude Rancher Series)

That in approximately 2004, at the Dude Rancher Inn, Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or

foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C.

§ 2251(a).

COUNT VI (Dude Rancher Series)

That in approximately 2004, at the Dude Rancher Inn, Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor, B. (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT VII (Video)

That in approximately 2003 or 2004, at a hotel in an unknown location, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of

such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT VIII (video)

That in approximately 2003 or 2004, at a hotel in an unknown location, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor B. ,(name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT IX (Kelly Inn Series)

That in approximately June 2005, at the Kelly Inn, Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit

conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C.

§ 2251(a).

COUNT X (Kelly Inn Series)

That in approximately June 2005, at the Kelly Inn, Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor B., (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT XI (Outdoor Series)

That in approximately the summer of 2005, by the Yellowstone River, in or near Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect

victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT XII (Outdoor Series)

That in approximately the summer of 2005, by the Yellowstone River, at or near Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor B., (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT XIII (LaQuinta Series)

That in approximately May 2006, at the LaQuinta Inn, Great Falls, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded,

induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT XIV (LaQuinta Series)

That in approximately May 2006, at the LaQuinta Inn, Great Falls, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor B., (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT XV (Quality Inn Series)

That in approximately August 2006, at the Quality Inn, Dickinson, in the State and District of North Dakota and at various locations in Montana, including Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT XVI (Quality Inn Series)

That in approximately August 2006, at the Quality Inn, Dickinson, North Dakota, in the State and District of North Dakota, and in various locations in Montana including Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor B., (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or

foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT XVII (Quality Inn Series)

That in approximately August 2006, at the Quality Inn, Dickinson, in the State and District of North Dakota and at various locations in Montana, including Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor K., (name withheld to protect victim's privacy, d/o/b --/96), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT XVIII (Residence)

That in approximately late 2005 through 2007, at 1124 Avenue E, Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor B. (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be

transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a).

COUNT XIX (Residence)

That in approximately late 2005 through 2007, at 1124 Avenue E, Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor B., (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct, knowing or having reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b).

COUNT XX (Distribution)

That in approximately 2005 through approximately 2006, at Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, knowingly distributed child pornography that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer located at 945 Custer and/or 1124 Avenue E, Billings, Montana, by distributing sexually explicit digital images of B., (name

withheld to protect victim's privacy, d/o/b --/94) via the Internet to another person or persons, in violation of 18 U.S.C. § 2252A(a)(2).

COUNT XXI (Transportation)

That during August 2006, at various locations in the State and District of Montana including Billings, and elsewhere, the defendant, BASIL PETER HERBST, knowingly transported child pornography in interstate or foreign commerce by any means, including by digital camera and/or laptop computer he carried with him from North Dakota, in violation of 18 U.S.C. § 2252A(a)(2).

COUNT XXII (Receipt)

That from a date unknown and continuing thereafter until on or about July 26, 2007, at Billings and elsewhere, in the State and District of Montana and elsewhere, the defendant, BASIL PETER HERBST, knowingly received child pornography that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer located at 945 Custer and 1124 Avenue E, Billings, Montana, and other locations, in violation of 18 U.S.C. § 2252A(a)(2).

COUNT XXIII (Possession)

That from a date unknown and continuing thereafter until on or about July 26, 2007, at Billings and elsewhere, in the State and District of Montana and elsewhere, the defendant, BASIL PETER HERBST, knowingly possessed computer files, digital camera images and/or videos containing an image or images of child pornography that had been mailed, or shipped, or transported in interstate or foreign commerce or that were produced using material that had been mailed, shipped or transported in interstate or foreign commerce by any means including by computer, digital camera, and/or

videocamera located at various locations in Billings including 945 Custer and 1124 Avenue E, Billings, Montana, and other locations, in violation of 18 U.S.C. § 2252A(a)(5)(B).

FORFEITURE ALLEGATION

As a result of the commission of the crimes described in the Counts above, and upon his conviction, the defendant, BASIL PETER HERBST, shall forfeit to the United States, all right, title and interest in the following described property that represents property used to commit those offenses, to-wit:

- silver Toshiba Satellite laptop computer, serial number 65334616K
- black and silver "emachine" T2042 desktop computer, serial number QIP2B-B07-02221
- beige home-built desktop computer with USB written in black letter on the bottom of the face plate, no serial number
- Kodak digital camera, serial number KCKDY53800896
- Digital concepts mini digital camera
- Samsung digital video camera and power cable, serial number V6266VKX328660F
- RCA CDS1005 digital camera, serial number 038510393
- Blue DXG 3.0 megapixel digital video camera, s/n A64058879
- Logitech web camera
- various items of removable computer media including CDs and DVDs

pursuant to 18 U.S.C. § 2253(a)(3).

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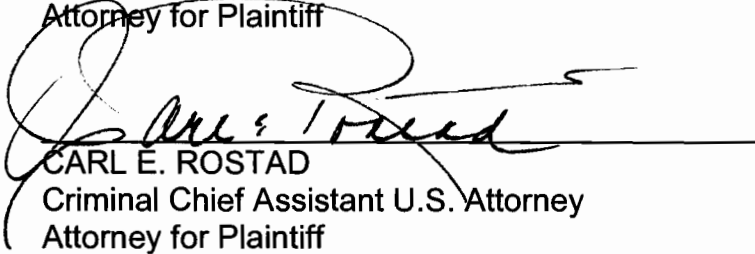
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A TRUE BILL.



WILLIAM W. MERCER
United States Attorney
Attorney for Plaintiff



CARL E. ROSTAD
Criminal Chief Assistant U.S. Attorney
Attorney for Plaintiff

FOREPERSON



Crim. Summons

Warrant: ✓ (IN CUSTODY)

Bail: NONE

United States District Court

DISTRICT OF MONTANA, BILLINGS DIVISION

UNITED STATES OF AMERICA

WARRANT FOR ARREST

v.

CASE NUMBER: CR-07-103-BLG-JDS

BASIL PETER HERBST
(IN CUSTODY)

TO: UNITED STATES MARSHAL AND ANY AUTHORIZED UNITED STATES OFFICER

YOU ARE HEREBY COMMANDED to arrest BASIL PETER HERBST and take the arrested person without unnecessary delay before the nearest federal magistrate judge to answer the INDICTMENT charging HIM with SEXUAL EXPLOITATION OF CHILDREN, DISTRIBUTION OF CHILD PORNOGRAPHY, TRANSPORTATION OF CHILD PORNOGRAPHY, RECEIPT OF CHILD PORNOGRAPHY, POSSESSION OF CHILD PORNOGRAPHY, and FORFEITURE in violation of Title 18, United States Code, Sections 2251(a), 2251(b), 2252A(a)(2), 2252A(a)(5)(B), and 2253(a)(3).

Assigned to: AUSA MARCIA HURD



P. Cluff, Deputy Clerk

AS ORDERED BY U.S. MAGISTRATE JUDGE CAROLYN S. OSTBY
Billings, Montana



BAIL FIXED AT NONE

Date of Issue: August 16, 2007

RETURN	
DATE RECEIVED:	LOCATION:
EXECUTED BY ARREST OF THE ABOVE-NAMED DEFENDANT	
DATE OF ARREST:	DWIGHT MACKAY UNITED STATES MARSHAL
LOCATION:	
BY: Deputy U.S. Marshal	